IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7375 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEGHNATHI RAMESHGIRI

Versus

STATE OF GUJARAT

Appearance:

MR YATIN SONI for Petitioner No. 1

MS MANISHA SHAH AGP for Respondents No. 1-3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/10/2001

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner before this Court is a minor, one

Meghnathi Uditgiri Rameshgiri. The petitioner belongs to Socially & Educationally Backward Class as well as Nomadic Tribe/De-notified Nomadic Tribe. Petitioner has passed Standard-XII examination in the month of June, 2001 and has sought admission to Medical College. The petitioner had earlier taken Standard-XII examination in the month of March/April, 2000 and had failed at the said examination. The petitioner could have taken examination in the concerned subject at the supplementary examination held in the month of July, 2000. However, the petitioner did not take the said supplementary examination, instead, the petitioner made second attempt in the examination held in the month of March/April, 2001. In the said examination, the petitioner has secured 370 marks out of 450 marks in the subjects of Science & Mathematics. He has applied for admission to Medical College on the seats reserved for Socially & Educationally Backward Class. He has also applied for admission on the surplus seats reserved for Scheduled Tribe candidates as Nomadic Tribe/De-notified Nomadic Tribe person. While preparing the merit list, a deduction of 30 marks has been made from the total marks obtained by the petitioner and he has been placed at serial no. 1296. Feeling aggrieved, the petitioner has preferred the present petition. The petitioner has also challenged Rule-5.2 of the Rules for Admission to First M.B.B.S/First B.D.S/First B. Physio courses at the Government Medical Colleges, Government Dental Colleges & Government Schools of Physiotherapy and self-financing institutes for these courses for the Academic Year 2001-2002 [hereinafter referred to as, `the said Rules'].

Rule 5.2 of the said Rules reads as under :-

> `5.2 Fifteen marks shall be deducted for each failure or drop at the qualifying examination. For this purpose, non-appearance in the qualifying examination when due or appearance at the qualifying examination in part will be treated at par and entail deduction of fifteen marks.'

In view of the above rule, the petitioner having failed at March/April, 2000 examination and having not appeared at the supplementary examination of July, 2000, he is liable to a deduction of fifteen marks for each of the said examinations i.e., in all thirty marks. Mr. Soni has challenged the said rule as being arbitrary. He has submitted that the supplementary examination is held

with a view to offering an opportunity to the failing student to make another attempt in the concerned subject in the supplementary examination so as to enable such student to secure admission to further courses in the same academic year. However, a student is supposed to take supplementary examination only in the subjects where he has failed. In the present case, the petitioner had desired to take examination in all the subjects which he could not have done at the supplementary examination. For taking the examination afresh in all the subjects, the petitioner had to wait till the examination was held in the month of March/April, 2001. The petitioner, therefore, cannot be said to have either failed at the supplementary examination or to have not appeared at the said examination nor can the supplementary examination be said to be a qualifying examination, as envisaged in the said Rule 5.2. Further, with respect to the admission to the Engineering/Pharmacy courses, such supplementary examination is not considered to be a qualifying examination and the student missing such qualifying examination would not be liable to deduction of any marks. Thus, the impugned Rule 5.2 of the said Rules is arbitrary and discriminatory and requires to be quashed and set-aside.

I see no substance in the contentions raised by Mr. Soni. As it is apparent, the rules for admission to a Medical College and an Engineering/Pharmacy College are quite different. The student seeking admission to the medical college, therefore, cannot claim the same benefit as is offered to a student seeking admission to Engineering College. Rule-4 of the said Rules provides for Qualifying Examination. It provides, inter alia, that, `the candidates who have passed Higher Secondary Course/Equivalent Examination, prior to April/May of the current year or the supplementary examination of the preceding year, shall not be eligible for admission.' Thus, only those of the students who have passed Higher Secondary courses/equivalent examination in the month of April/May, 2001 or in the supplementary examination of the year 2000 alone are eligible for admission to the above referred courses for the Academic Year 2001-2002. It, therefore, cannot be gainsaid that the supplementary examination is a qualifying examination, as envisaged in the impugned Rule 5.2 of the said Rules. If the supplementary examination is considered to be a qualifying examination, not appearing at the said examination or failing at the said examination shall certainly be said to be an attempt which should entail deduction of fifteen marks.

So far as admission to Engineering College is concerned, the rule of eligibility is quite different. Rule-4 of the Rules for Admission to First Year Engineering & Pharmacy and Diploma Courses provides for eligibility. Under the said rule, not only the students passing Standard-XII examination in the preceding academic year are made eligible for such admission but the students passing the qualifying examination in the preceding two academic years and also the supplementary examination of the preceding academic year are considered eligible for such admission. Thus, the eligibility for admission to two courses viz., the medical courses and engineering/pharmacy courses are quite different. Any comparison between the said set of rules would be inapposite.

In above view of the matter, I am of the opinion that the impugned Rule 5.2 is neither unconstitutional nor invalid. The petitioner is liable for deduction of fifteen marks each for failing at the 12th Standard examination in the month of April, 2000 and for not appearing at the supplementary examination of July, 2000. The action of the respondent no. 3 in deducting thirty marks from the total marks obtained by the petitioner is in consonance with the said Rules and does not warrant interference. The petition is, therefore, dismissed. Rule is discharged. The parties shall bear their own costs.

{Ms. R.M Doshit, J.}

Prakash*